

Requests for accommodations by persons with disabilities.

(a) **[Definitions]** For purposes of this section the following definitions apply:

(1) “Qualified individuals with disabilities” means persons covered by the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), Civil Code section 54.8, and other related state and federal laws. The term also includes individuals who have a physical or mental impairment that limits a major life activity; have a record or a history of such impairment; or are regarded or treated as having such impairment.

(2) “Requestor” means any lawyer, party, witness, lien holder, or any other individual with an interest in participating in any program of the Division or in attending any proceeding before the Workers’ Compensation Appeals Board.

(3) “Accommodation(s)” may include, but are not limited to, making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to the qualified individuals with disabilities, auxiliary aids and services, which are not limited to equipment, devices, materials in alternative formats, and qualified interpreters or readers; and making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by qualified individuals with disabilities requesting accommodations. While not requiring that each existing facility be accessible, this standard, known as “program accessibility,” must be provided by methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate sites.

(4) The “rule” means this rule regarding requests for accommodations by qualified individuals with disabilities.

(5) “Statewide disability accommodation coordinator” is the person designated by the Division who is responsible for the coordination of efforts of the Division to comply and carry out its responsibilities under Title II of the ADA at a statewide level. The designated statewide disability accommodation coordinator may be contacted at 425 Golden Gate Avenue, 9th Floor, San Francisco, California 94102.

(6) “District office disability accommodation coordinator” is the person designated by the Division who is responsible for the coordination of efforts of the Division to comply and carry out its responsibilities under Title II of the ADA at the district office of the WCAB where the proceeding will take place. The designated district office disability accommodation coordinator may be contacted at the district office of the WCAB where the proceeding will take place.

(7) “Confidentiality” applies to the identity of the requestor in all oral and written communications, including all files and documents submitted by a requestor as part of the request process.

(b) **[Process]** The following process for requesting accommodations is established:

(1) Requests for accommodation(s) pursuant to this rule may be presented ex parte in writing, on the “Request for Accommodations by Persons with Disabilities” form (DWC Form 5) contained in Section _____, by other writing, or orally. Requests should be made to the district office disability accommodation coordinator where the proceeding will take place, to the workers’ compensation administrative law judge who will preside over the proceeding, or to the statewide disability accommodation coordinator.

(2) All requests for accommodations shall include a description of the accommodation sought, along with a statement of the impairment that necessitates such accommodation. The requestor is not required to provide the medical diagnosis but should describe the functional impairment or limitation so that an accommodation may be provided. The requestor may be required to provide additional information about the qualifying impairment.

(3) Requests should be made as far in advance of the requested accommodations implementation date as possible, and in any event should be made no less than five business days prior to the requested implementation date. If the Division is able to provide the accommodation within less than 5 days, it shall do so.

(4) Upon request, the Division shall keep confidential the identity of the requestor as designated on the written request, or on the Request for Accommodations by Persons with Disabilities form (DWC Form 5), and all other identifying information provided to the Division pursuant to the request for reasonable accommodation. The Division will also place the DWC Form 5 in the non-public portion of the WCAB file.

(c) **[Permitted communication]** A requestor may make ex parte communications regarding the request for reasonable accommodation with the workers’ compensation administrative law judge to whom the request is made. Such communications shall deal only with the accommodation(s) the requestor’s disability requires and shall not deal in any manner with the subject matter or merits of the proceedings before the Division.

(d) **[Grant of a request for accommodation(s)]** The Division shall grant a request for accommodation(s) as follows:

(1) In determining whether to grant a request for accommodation and what accommodation to grant, the Division shall consider the provisions of the Americans with Disabilities Act of 1990 and related state and federal laws.

(2) The Division shall inform the requestor orally and/or in writing of the decision and/or by findings of fact and order, as may be appropriate, that the request for accommodations is granted, in whole or in part, and the nature of the accommodation(s) to be provided, if any.

(e) **[Denial of a request for accommodation(s)]** A decision to deny a requested accommodation, in whole or in part, shall be communicated to the requestor in writing by the district office disability accommodation coordinator or the statewide disability accommodation coordinator, or by findings of fact and order by the workers' compensation administrative law judge, as may be appropriate. A request for accommodation may be denied if the Division or the workers' compensation administrative law judge finds that:

(1) The requestor has failed to satisfy the requirements of this rule;

(2) The requestor is not a qualified individual with a disability;

(3) The requested accommodation(s) would create an undue financial or administrative burden on the Division;

(4) The requested accommodation(s) would fundamentally alter the nature of the service, program, or activity.

(5) The decision that the requested accommodation(s) would result in undue financial or administrative burden or would result in a fundamental alteration in the nature of the service, program, or activity being provided under subdivisions (e)(2) and (e)(3), must be made by the Administrative Director or his or her designated Division's disability accommodation coordinator(s) after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such a burden or alteration, the Administrative Director shall take any other action that would not result in such a burden or alteration but would nevertheless ensure that the requestor receive the services provided by the Division and the Workers' Compensation Appeals Board.

(f) **[Time for issuing decision.]** The Division shall, within 10 working days of the receipt of the request for reasonable accommodation, either:

(1) Issue an oral and/or written decision and/or findings of fact and order, as may be appropriate, granting in whole or in part, the request for accommodation; or

(2) Issue a written decision and/or findings of fact and order, as may be appropriate, denying, in whole or in part, the request for accommodation; or

(3) Issue a written decision referring the matter to the workers' compensation administrative law judge who will preside over the proceedings or to the presiding workers' compensation administrative law judge for assignment if the matter has not been assigned, for findings and order and/or for further proceedings if appropriate and decision.

(g) **[Review Procedure]** The following review procedure is established:

(1) A requestor in the proceeding in which an accommodation has been denied or granted under subdivisions (d) and (e) of this section by a district office disability accommodation coordinator may seek review of the decision within but no later than 10 working days of the date of the decision granting or denying the request for accommodation by submitting a written request for review to the presiding workers' compensation administrative law judge at the WCAB district office where the matter is assigned. The presiding workers' compensation administrative law judge shall issue a written decision on review within 10 working days from the date the request for review is received by the district office of the WCAB where the case is assigned.

(2) A requestor in the proceeding in which an accommodation has been denied or granted under subdivisions (d) and (e) of this section by the statewide disability accommodation coordinator may seek review of the decision within but no later than 10 working days of the date of the decision granting or denying the request for accommodation by submitting a written request for review to the Administrative Director. The Administrative Director shall issue a written decision on review within 10 working days from the date the request for review is received by the Division.

(3) A requestor in the proceeding in which an accommodation has been denied or granted under subdivisions (d) and (e) of this section by the statewide disability accommodation coordinator or by a district office disability accommodation coordinator and such request is not related to workers' compensation proceedings which are or will be taking place at a district office of the WCAB may seek review of the decision within but no later than 10 working days of the date of the decision granting or denying the request for accommodation by submitting a written request for review to the Administrative Director. The Administrative Director shall issue a written decision on review within 10 working days from the date the request for review is received by the Division.

(4) A requestor whose request for accommodation has been denied or granted under subdivision (g)(1), (g)(2) or (g)(3) of this section or whose request for accommodation has been denied or granted by findings of fact and order by a workers' compensation administrative law judge of the WCAB may file a petition seeking review of the decision granting or denying the request for accommodation with Workers' Compensation

Appeals Board for relief in a manner prescribed by Section 10840 or by Section 10843 of the Board's Rules of Practice and Procedure.

(h) **[Duration of Accommodation(s)]** The accommodation[s] by the Division shall commence on the date indicated in the oral/written decision granting the request for accommodation under subdivision (d)(2) and shall remain in effect for the period specified in the decision. The Division may grant an accommodation[s] for indefinite periods of time or for a particular matter or appearance.

(i) **[Use of Sign Language Interpreter(s)]** In cases where services of sign language interpreter(s) are utilized as reasonable accommodation(s) and such services are made available by the Division, the Division shall be reimbursed for its reasonable, actual and necessary medical-legal expense by the employer pursuant to Labor Code section 5811. Payment shall be made payable to the Administrative Director, Division of Workers' Compensation.

(j) Nothing in this rule shall be construed to impose limitations or to invalidate the remedies, rights, and procedures accorded to any qualified individuals with disabilities under state or federal law.

Note: Authority Cited: Sections 133, 4603.5 and 5307.3, 5307.4, Labor Code.

Reference: Sections 60, 110(b), 110(c), 111(a), 123, 123.5, 123.6(a), 124(a), 125, 130, 138.7.3201, 4620, 4621, 4622, 5300(f), 5301, 5305, 5307, 5309, 5310, 5312, 5710(a), 5811, Labor Code. Sections 54.8, 1798, 1798.1, 1798.3, Civil Code. Sections 11135, 11351(c), Government Code. 42 USC Sections, 12102, 12111, 12112, 12131, 12132.